



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450
www.uspto.gov

Paper No. 7

Patent Department
Mitsubishi Electric Research
Laboratories, Inc.
201 Broadway
Cambridge, MA 02139

COPY MAILED

MAY 27 2004

OFFICE OF PETITIONS

In re Application of
Anthony Vetro, et al.
Application No. 09/854,020
Filed: May 11, 2001
Attorney Docket No. MH-5073

ON PETITION

This is a decision on the petition, filed October 27, 2003, requesting withdrawal of the above-identified application from issue to permit consideration of an amendment after allowance. The petition was recently referred to the Office of Petitions for a decision thereon.

A Notice of Allowance and Issue Fee Due was mailed on September 29, 2003. On October 27, 2003, the present petition to withdraw from issue was filed. The mere filing of a petition does not stay the period for paying the issue fee. The statute is clear that failure to timely pay the issue fee within three months of the mailing date of the Notice of Allowance and Issue Fee Due will result in abandonment of the application. In fact, MPEP Section 1308 warns that "[u]nless applicant receives a written communication from the Office that the application has been withdrawn from issue, the issue fee must be timely submitted to avoid abandonment." The due date for paying the issue fee was December 29, 2003. Therefore, this application became abandoned by operation of law for failure to timely pay the issue fee on or before December 29, 2003.

The petition is dismissed.

Public Law 97-247, which revised patent and trademark fees, provides for the revival of an "unintentionally" abandoned application without a showing that the delay in prosecution or in late payment of an issue fee was "unintentional." See 37 CFR 1.137(b) in effect as of December 1, 1997. *Note Changes to Patent Practice and Procedure; Final Rule Notice*, 62 Fed. Reg. 53131 (October 10, 1997), 1203 Off. Gaz. Patent Office 63 (October 21, 1997). An "unintentional" petition must be accompanied by the \$1,330 petition fee.

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing

of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Additionally, the petition to revive must be accompanied by the fees required in the Notice of Allowance and Issue Fee Due. However, applicant is reminded that since the issue fee was increased to \$1330 effective October 1, 2003, the issue fee must be paid in the revised amount.

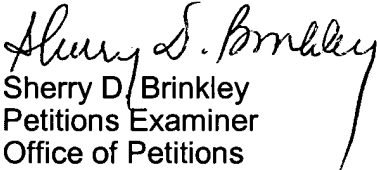
Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITION
 Commissioner for Patents
 Post Office Box 1450
 Alexandria, VA 22313-1450

By hand: Customer Window
 2011 South Clark Place
 Crystal Plaza Two, Lobby
 Room 1B03
 Arlington, VA 22202

The centralized facsimile number is **(703) 872-9306**.

Telephone inquiries concerning this decision may be directed to the undersigned at (703) 305-9220.


Sherry D. Brinkley
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy